

**Senate File 2133 - Introduced**

SENATE FILE 2133

BY BOULTON

**A BILL FOR**

1 An Act relating to a family leave and medical leave insurance  
2 program that provides for paid, job-protected leave for  
3 certain family leave and medical leave reasons for eligible  
4 employees of specified employers.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   **96A.1 Short title.**

2     This section may be cited as the "*Iowa Family and Medical*  
3 *Leave Act*".

4     Sec. 2. NEW SECTION.   **96A.2 Definitions.**

5     As used in this chapter, unless the context otherwise  
6 requires:

7     1. "*Child*" means a biological, adopted, or foster child,  
8 a stepchild, a legal ward, or a child of a person standing in  
9 loco parentis, regardless of the child's age or dependency  
10 status.

11    2. "*Covered employer*" means a private sector employer who  
12 has ten or more employees for each working day during each of  
13 twenty or more calendar workweeks in the current or previous  
14 calendar year and a public employer without regard to the  
15 number of employees employed.

16    3. "*Department*" means the department of workforce  
17 development.

18    4. "*Director*" means the director of the department of  
19 workforce development.

20    5. "*Employee*" means the same as defined in section 91A.2.  
21 "*Employee*" does not include an independent contractor, a self-  
22 employed person, or a patient or inmate employed by a state  
23 or local institution to which the patient or inmate has been  
24 sentenced or committed.

25    6. "*Employer*" means the same as defined in 91A.2.  
26 "*Employer*" includes a temporary staffing agency or employment  
27 agency.

28    7. "*Employment benefits*" means all benefits provided or  
29 made available to an employee by an employer, including group  
30 life insurance, health insurance, disability insurance, sick  
31 leave, annual leave, educational benefits, and pensions except  
32 benefits that are provided by a practice or written policy of  
33 an employer or through an employee benefit plan as defined in  
34 29 U.S.C. §1002(3).

35    8. "*Family leave*" means a leave taken from work by an

1 employee for any of the following reasons:

2     *a.* To participate in providing care, including physical or  
3 psychological care, for a family member of the employee made  
4 necessary by a serious health condition of the family member.

5     *b.* To bond with the employee's child after the child's  
6 birth or with a child under the age of eighteen placed with the  
7 employee for adoption or foster care.

8     *c.* Because of a qualifying exigency for a family member as  
9 permitted under the federal Family and Medical Leave Act of  
10 1993, as amended, and federal regulations as provided in 29  
11 C.F.R. §825.126.

12     9. "*Family member*" means a child, parent, or spouse of an  
13 employee.

14     10. "*Gross earnings*" means the same as defined in section  
15 85.61.

16     11. "*Health care provider*" means a physician or other  
17 health care practitioner licensed, accredited, registered, or  
18 certified to perform specified health care services consistent  
19 with state law.

20     12. "*In loco parentis*" means an individual who has  
21 day-to-day responsibilities to care for or financially support  
22 a child.

23     13. "*Inpatient care*" means an overnight stay in a hospital,  
24 hospice, or residential medical care facility, including any  
25 period of incapacity, or any subsequent treatment in connection  
26 with such inpatient care.

27     14. "*Medical leave*" means a leave from work taken by an  
28 employee made necessary by the employee's own serious health  
29 condition.

30     15. "*Parent*" means a biological, adoptive, step, or foster  
31 father or mother, or any other individual who stands in  
32 loco parentis to an employee or who stood in loco parentis  
33 when the employee was a child. "*Parent*" does not include a  
34 parent-in-law.

35     16. "*Period of incapacity*" means an inability to work,

1 attend school, or perform other regular daily activities due  
2 to a serious health condition, treatment of a serious health  
3 condition, or recovery from a serious health condition.

4 17. "*Premium*" or "*premiums*" means the payments required by  
5 section 96A.12 and paid to the department for deposit in the  
6 family and medical leave insurance account pursuant to section  
7 96A.22.

8 18. "*Public employer*" means the state of Iowa, its  
9 boards, commissions, agencies, departments, and its political  
10 subdivisions including school districts and other special  
11 purpose districts.

12 19. "*Serious health condition*" means an illness, injury,  
13 impairment, physical condition, or mental condition that  
14 involves inpatient care in a hospital, hospice, medical care  
15 facility, or continued treatment or continuing supervision by  
16 a health care provider.

17 20. "*Spendable weekly earnings*" means the amount remaining  
18 after payroll taxes are deducted from an employee's gross  
19 weekly earnings.

20 21. "*Spouse*" means the other person with whom an individual  
21 has entered into marriage as defined or recognized under state  
22 law for purposes of marriage in the state in which the marriage  
23 was entered into or, in the case of a marriage entered into  
24 outside of any state, if the marriage is valid in the place  
25 where the marriage was entered into and the marriage could have  
26 been entered into in at least one state, including a same sex  
27 or common law marriage.

28 22. "*Wages*" means the same as defined in section 91A.2.

29 **Sec. 3. NEW SECTION. 96A.3 Benefit eligibility.**

30 An employee is eligible for family leave and medical leave  
31 as provided in this chapter after working for a covered  
32 employer for both a minimum of twelve consecutive months  
33 immediately preceding the employee's request for leave and a  
34 minimum of one thousand two hundred fifty hours during that  
35 twelve-consecutive-month period.

1     Sec. 4. NEW SECTION.   **96A.4 Leave entitlement for a defined**  
2 **twelve-month period.**

3     1. An employee is entitled to a maximum of twelve weeks  
4 of family leave during a defined period of twelve consecutive  
5 months.

6     2. An employee is entitled to a maximum of twelve weeks of  
7 medical leave during a defined period of twelve consecutive  
8 months unless the employee experiences a serious health  
9 condition, which is pregnancy-related, that results in a longer  
10 period of incapacity in which case any extended medical leave  
11 beyond twelve weeks shall conform with section 216.6.

12    3. An employee is entitled to a maximum combined total of  
13 paid family leave and medical leave of sixteen weeks during a  
14 defined period of twelve consecutive months.

15    4. An employee is not entitled to family leave or medical  
16 leave of less than eight consecutive hours.

17    Sec. 5. NEW SECTION.   **96A.5 Calculating the defined**  
18 **twelve-month period.**

19    The defined period of twelve consecutive months for  
20 calculation of an eligible employee's family leave or medical  
21 leave entitlement begins on any of the following:

22    1. The date of birth of an employee's child or the date  
23 of placement of a child for adoption or foster care with the  
24 employee.

25    2. The first day of family leave that an employee takes for  
26 a family member's serious health condition or a family member's  
27 qualifying exigency.

28    3. The first day of medical leave.

29    Sec. 6. NEW SECTION.   **96A.6 Disqualification from leave**  
30 **entitlement.**

31    An eligible employee is disqualified for family leave or  
32 medical leave benefits under this chapter for any of the  
33 following:

34    1. An absence due to the employee's willful intention to  
35 injure or cause a sickness to the employee or to the employee's

1 family member.

2 2. An injury or sickness caused by the employee engaging in  
3 an illegal act.

4 3. The employee's absence due to an employer taking any  
5 disciplinary action against the employee.

6 Sec. 7. NEW SECTION. 96A.7 Employee notice to employer of  
7 intent to take leave.

8 1. If leave for the birth of a child or placement of a child  
9 for adoption or foster care with an employee is foreseeable,  
10 the employee shall provide written notice not less than thirty  
11 calendar days before the date the leave is to begin.

12 2. If the birth of a child or placement of a child for  
13 adoption or foster care with an employee requires leave to  
14 begin in less than thirty calendar days, the employee shall  
15 provide written notice as far in advance as is practicable.

16 3. If leave for a family member's serious health condition  
17 or an employee's serious health condition is foreseeable based  
18 on planned medical treatment, the employee shall do all of the  
19 following:

20 a. Make a reasonable effort to schedule such medical  
21 treatment, subject to the recommendation of the employee's or  
22 family member's health care provider as appropriate, to not  
23 unduly disrupt the operations of the employer.

24 b. Provide the employer with not less than thirty calendar  
25 days prior written notice of the employee's intention to take  
26 leave for a family member's serious health condition or the  
27 employee's serious health condition.

28 4. If leave for a family member's serious health condition  
29 or an employee's serious health condition is not foreseeable,  
30 the employee shall provide written notice as far in advance as  
31 is practicable.

32 Sec. 8. NEW SECTION. 96A.8 Weekly claim, certification, and  
33 verification.

34 Beginning January 1, 2023, family leave or medical leave  
35 insurance benefits are payable to an employee during a period

1 in which the employee is unable to perform the employee's  
2 regular or customary work because the employee is on family  
3 leave or medical leave if the employee meets all of the  
4 following requirements:

5 1. The employee files a weekly claim for benefits with the  
6 department as required per rules adopted by the director.

7 2. The employee meets the eligibility requirements pursuant  
8 to section 96A.3 or the elective coverage requirements pursuant  
9 to section 96A.14.

10 3. The employee consents to the disclosure of information or  
11 records that may be deemed private or confidential under state  
12 or federal law. Disclosure of such information and records by  
13 another state agency or an employer to the department shall  
14 be solely for purposes related to the administration of this  
15 chapter. Information and records disclosed by an employee  
16 under this chapter shall not be public records as defined in  
17 section 22.1.

18 4. The employee authorizes the health care provider of the  
19 employee's family member or of the employee, as applicable, to  
20 complete a certification of a serious health condition in a  
21 form as required by the director.

22 5. The employee attests that written notice has been  
23 provided to the employee's employer per section 96A.7.

24 6. The employee provides documentation of a family member's  
25 qualifying exigency if requested by the employee's employer.

26 Sec. 9. NEW SECTION. 96A.9 Waiting period for leave  
27 benefits.

28 Family leave or medical leave insurance benefits shall be  
29 payable to an eligible employee following a waiting period  
30 consisting of the first seven calendar days of leave. However,  
31 no waiting period applies to a leave for the birth or placement  
32 of a child with an eligible employee.

33 Sec. 10. NEW SECTION. 96A.10 Weekly leave benefit amount.

34 1. The basis for the calculation of a leave benefit amount  
35 shall be the weekly earnings of an eligible employee on the

1 day the leave is granted. "Weekly earnings" means the gross  
2 earnings of an employee to which such employee would have been  
3 entitled had the employee worked the employee's customary hours  
4 for the full pay period in which the employee is on family  
5 leave or medical leave. Weekly earnings shall be computed as  
6 follows, rounded to the nearest dollar, for an employee who is  
7 paid on the following basis:

8     *a.* On a weekly pay period basis, the weekly earnings are the  
9 weekly gross earnings.

10    *b.* On a biweekly pay period basis, the weekly earnings are  
11 one-half of the biweekly gross earnings.

12    *c.* On a semimonthly pay period basis, the weekly earnings  
13 are the semimonthly gross earnings multiplied by twenty-four  
14 and then divided by fifty-two.

15    *d.* On a monthly pay period basis, the weekly earnings  
16 are the monthly gross earnings multiplied by twelve and then  
17 divided by fifty-two.

18    *e.* On a yearly pay period basis, the weekly earnings shall  
19 be the yearly earnings divided by fifty-two.

20    *f.* On a daily or hourly basis, or by the output of an  
21 employee, the weekly earnings shall be computed by dividing by  
22 thirteen the earnings, including shift differential pay but  
23 not including overtime or premium pay, of the employee earned  
24 in the last completed period of thirteen consecutive calendar  
25 weeks immediately preceding the start day of the leave. If  
26 the employee was absent from employment for personal reasons  
27 during part of the thirteen calendar weeks preceding the  
28 leave, the employee's weekly earnings shall be the amount the  
29 employee would have earned had the employee worked when work  
30 was available to other employees of the employer in a similar  
31 occupation. A week that does not fairly reflect the employee's  
32 customary earnings shall be replaced by the closest previous  
33 week with earnings that fairly represent the employee's  
34 customary earnings.

35    2. If on the date that leave begins an employee's hourly



1 earnings cannot be ascertained, the earnings for the purpose  
2 of calculating the benefit amount shall be the usual earnings  
3 for similar services where such services are rendered by paid  
4 employees.

5 3. If an employee earns either no wages or less than the  
6 usual weekly earnings of a regular full-time adult laborer  
7 in the line of work in which the employee is working in  
8 that locality, the weekly earnings shall be one-fiftieth of  
9 the total earnings which the employee has earned from all  
10 employment during the twelve consecutive calendar months  
11 immediately preceding the date that the employee's leave  
12 begins.

13 4. The weekly leave benefit amount payable to an employee  
14 for any one week shall be eighty percent of the employee's  
15 weekly spendable earnings, but shall not exceed an amount equal  
16 to two hundred percent of the statewide average weekly wage  
17 paid to employees as determined by the department pursuant to  
18 section 96.19 and in effect on the date that the employee's  
19 leave commences. However, the weekly leave benefit amount  
20 shall be a minimum equal to the lesser of the weekly leave  
21 benefit amount of a person whose gross weekly earnings are  
22 thirty-five percent of the statewide average weekly wage, or to  
23 the spendable weekly earnings of the employee.

24 Sec. 11. NEW SECTION. 96A.11 **Payment of benefits to an**  
25 **eligible employee.**

26 1. The department shall send the first benefit payment to  
27 an employee within ten calendar days after the first properly  
28 completed weekly claim from the employee is received by  
29 the department. Subsequent payments shall be sent at least  
30 biweekly to an eligible employee if a properly completed weekly  
31 claim from the employee is received by the department.

32 2. If an employer contests an employee's initial claim  
33 for family leave or medical leave benefits, the employer must  
34 notify the employee and the department in the manner prescribed  
35 by the director within ten calendar days of the employer's

1 receipt of notice from the department of the employee's filing  
2 of a claim for benefits. Failure to timely contest an initial  
3 application shall constitute a waiver of objection to the  
4 family leave or medical leave claim.

5 3. If the department or the employer contests an employee's  
6 eligibility for benefits after the employee begins receiving  
7 benefits the employee shall continue to be paid benefits  
8 conditionally for any weeks for which the employee files a  
9 claim for benefits. The employee's right to retain such  
10 benefit payments shall be conditioned upon the department's  
11 finding that the employee is eligible for such benefit  
12 payments.

13 a. At an employee's request, the department shall hold  
14 conditional benefit payments until the department resolves the  
15 employee's eligibility status.

16 b. Payment shall be issued promptly for any withheld benefit  
17 payments if the department determines that an employee is  
18 eligible for benefits.

19 c. If the department determines that an employee is  
20 ineligible for the conditionally paid benefits, the employee  
21 shall repay the overpayment per rules as adopted by the  
22 director.

23 Sec. 12. NEW SECTION. 96A.12 Funding the family leave and  
24 medical leave insurance program.

25 1. Beginning on January 1, 2021, and ending December  
26 31, 2022, the department shall assess for each employee  
27 in employment with a covered employer a premium rate of  
28 four-tenths of one percent of an employee's wages based on the  
29 amount of the individual's wages, subject to subsection 6.

30 a. The premium rate for family leave benefits shall be equal  
31 to one-third of the total premium rate.

32 b. The premium rate for medical leave benefits shall be  
33 equal to two-thirds of the total premium rate.

34 2. For calendar year 2023 and subsequent calendar years the  
35 director shall determine the percentage of paid claims related

1 to family leave benefits and the percentage of paid claims  
2 related to medical leave benefits and adjust the premium rates  
3 set in subsection 1 by the proportional share of claims paid  
4 for both types of leave.

5 3. For family leave premiums a covered employer may deduct  
6 up to forty-five percent of the full amount of the required  
7 premiums from the wages of each employee. The remaining  
8 fifty-five percent of the required premiums shall be paid by  
9 the covered employer.

10 4. For medical leave premiums a covered employer may deduct  
11 up to forty-five percent of the full amount of the required  
12 premiums from the wages of each employee. The remaining  
13 fifty-five percent of the required premiums shall be paid by  
14 the covered employer.

15 5. A covered employer may elect to pay all or any portion of  
16 the employee's share of the premiums for family leave benefits  
17 or medical leave benefits or both.

18 6. The director shall annually set a maximum limit on the  
19 amount of an employee's wages that are subject to a premium  
20 assessment under this section that is equal to the contribution  
21 and benefit base for the calendar year as determined by the  
22 United States social security administration for purposes of  
23 26 U.S.C. §3121(a).

24 7. For calendar year 2023 and subsequent calendar years,  
25 the total premium rate shall be based on the family leave and  
26 medical leave insurance account balance ratio as of September  
27 30 of the previous year. The director shall calculate the  
28 account balance ratio by dividing the balance of the family  
29 leave and medical leave insurance account by the total wages  
30 paid by covered employers. The division shall be carried  
31 to the fourth decimal place with the remaining fraction  
32 disregarded unless it amounts to five hundred thousandths or  
33 more in which case the fourth decimal place shall be rounded  
34 to the next higher digit. If the family leave and medical  
35 leave insurance account balance ratio is any of the following

1 percentages, the premium shall be the following percentage of  
2 an employee's wages subject to a premium assessment:

3     *a.* If the ratio is zero to nine hundredths of one percent,  
4 the premium shall be six-tenths of one percent.

5     *b.* If the ratio is one-tenth of one percent to nineteen  
6 hundredths of one percent, the premium shall be five-tenths of  
7 one percent.

8     *c.* If the ratio is two-tenths of one percent to twenty-nine  
9 hundredths of one percent, the premium shall be four-tenths of  
10 one percent.

11     *d.* If the ratio is three-tenths of one percent to  
12 thirty-nine hundredths of one percent, the premium shall be  
13 three-tenths of one percent.

14     *e.* If the ratio is four-tenths of one percent to forty-nine  
15 hundredths of one percent, the premium shall be two-tenths of  
16 one percent.

17     *f.* If the ratio is five-tenths of one percent or greater,  
18 the premium shall be one-tenth of one percent.

19     8. Beginning January 1, 2023, if the account balance ratio  
20 calculated in subsection 7 is below five hundredths of one  
21 percent, the director shall assess a solvency surcharge at  
22 the lowest rate necessary to provide revenue to pay for the  
23 administrative and benefit costs of family leave and medical  
24 leave insurance for the calendar year. The solvency surcharge  
25 shall be at least one-tenth of one percent and no more than  
26 six-tenths of one percent and shall be added to the total  
27 premium rate assessed to each employee of a covered employer  
28 for family leave and medical leave benefits.

29     9. A covered employer shall collect all required premiums  
30 and surcharges from the employer's employees through payroll  
31 deductions and shall remit the amount collected and the amount  
32 to be paid by the employer to the department as required by  
33 rules adopted by the director.

34     10. On September 30 of each year the department shall  
35 average the number of employees reported by an employer over

1 the last four completed calendar quarters to determine the  
2 number of employees employed by the employer for the purpose  
3 of determining if an employer shall be considered a covered  
4 employer for the next calendar year.

5     **Sec. 13. NEW SECTION. 96A.13 Waiver of premium for**  
6 **out-of-state employee.**

7     1. An employer may file an application with the department  
8 for a conditional waiver of the payment of family leave and  
9 medical leave premiums assessed under section 96A.12 for an  
10 employee who meets all of the following requirements:

11     a. The employee is physically based outside of the state.

12     b. The employee is physically working in the state on a  
13 limited or temporary work schedule.

14     c. The employee is not expected to be physically working  
15 in the state for one thousand two hundred fifty hours or more  
16 during any consecutive twelve-month period.

17     2. The department shall approve an application that is  
18 signed by both the employee and the employee's employer  
19 attesting to compliance with the requirements of subsection 1.

20     3. If the employee physically works in the state for one  
21 thousand two hundred fifty hours or more in any consecutive  
22 twelve-month period, the conditional waiver shall expire and  
23 the employer and employee shall be responsible for all premiums  
24 pursuant to section 96A.12 for the consecutive twelve-month  
25 period in which the employee worked one thousand two hundred  
26 fifty hours or more. Upon submission of the premiums by the  
27 employer to the department, the employee shall be credited for  
28 the hours worked during that consecutive twelve-month period  
29 and shall be eligible for benefits under this chapter.

30     **Sec. 14. NEW SECTION. 96A.14 Self-employed persons elective**  
31 **participation in the family leave and medical leave insurance**  
32 **program.**

33     1. A self-employed person electing to participate in  
34 the family leave and medical leave insurance program shall  
35 be considered an employer or employee where the context so

1 dictates.

2     2. For benefits payable beginning January 1, 2023, a  
3 self-employed person may elect to participate in the family  
4 leave and medical leave insurance program under this chapter  
5 if the self-employed person meets all of the following  
6 requirements:

7     a. The initial participation period for the self-employed  
8 person must be a minimum of three years.

9     b. Any subsequent period of participation by the  
10 self-employed person must be for a minimum of one year.

11     c. The self-employed person must participate in both family  
12 leave and medical leave.

13     d. One hundred percent of all premiums assessed under  
14 section 96A.12 shall be paid by the self-employed person.

15     3. A self-employed person shall file a written notice of  
16 election of elective coverage with the department in the manner  
17 required by the director.

18     4. A self-employed person shall be eligible for  
19 family leave and medical leave benefits after working one  
20 thousand two hundred fifty hours in the state during the  
21 twelve-consecutive-month period immediately following the date  
22 of the written notice the self-employed person filed pursuant  
23 to subsection 3.

24     5. A self-employed person who has elected coverage may  
25 withdraw from coverage within thirty calendar days after the  
26 end of each period of coverage by filing a written notice of  
27 withdrawal as required by the director. The withdrawal shall  
28 take effect no sooner than thirty calendar days after the  
29 self-employed person files the notice of withdrawal.

30     6. If a self-employed person fails to submit the required  
31 premium payments, the department may cancel the person's  
32 elective coverage. The cancellation shall be effective no  
33 sooner than thirty days from the date of a written notice  
34 from the department to the self-employed person advising the  
35 self-employed person of the impending cancellation of the

1 self-employed person's elective coverage. The department shall  
2 collect all due and unpaid premiums for the remainder of the  
3 period of coverage from the self-employed person.

4 Sec. 15. NEW SECTION. **96A.15 Employment protection.**

5 1. An eligible employee who takes family leave or medical  
6 leave under this chapter is entitled to any of the following on  
7 the employee's return from leave:

8 a. To be restored to the same position held by the employee  
9 when the employee's leave commenced.

10 b. To be restored to an equivalent position with equivalent  
11 employment benefits, pay, and other terms and conditions of  
12 employment.

13 2. As a condition of restoration under subsection 1 for an  
14 employee who has taken medical leave, the employer may apply  
15 to the employee a uniform policy that requires an employee to  
16 provide certification from the employee's health care provider  
17 that the employee is able to resume work.

18 3. Taking leave under this chapter shall not result in the  
19 loss of any employment benefits accrued by an employee prior to  
20 the date on which the employee's leave commenced.

21 4. This section shall not be construed to entitle a restored  
22 employee to any of the following:

23 a. The accrual of any seniority or employment benefits  
24 during any period of leave.

25 b. Any right, benefit, or position of employment other than  
26 any right, benefit, or position of employment to which the  
27 employee would have been entitled had the employee not taken  
28 leave.

29 5. This section shall not be construed to prohibit an  
30 employer from requiring an employee on leave to report  
31 periodically to the employer on the status and intention of the  
32 employee to return to work.

33 6. An employer may deny restoration under this section to  
34 a salaried employee who is among the ten percent highest paid  
35 of the employees employed by the employer within seventy-five

1 miles of the facility at which the employee is employed if all  
2 of the following apply:

3     a. Denial of restoration is necessary to prevent substantial  
4 and grievous economic injury to the operations of the employer.

5     b. The employer notifies the employee of the intent of the  
6 employer to deny restoration on such basis at the time the  
7 employer determines such basis exists.

8     c. The employee is on leave and elects not to return  
9 to employment after receiving the employer's notice of the  
10 employer's intent not to restore the employee.

11     7. This section shall not be construed as providing an  
12 employee greater restoration rights than those required under  
13 the federal Family and Medical Leave Act of 1993, as amended.

14     Sec. 16. NEW SECTION. **96A.16 Maintenance of existing health**  
15 **benefits.**

16     If required by the federal Family and Medical Leave  
17 Act of 1993, as amended, an employer shall maintain any  
18 existing health benefits of an employee for the duration of  
19 an employee's leave under this chapter. If the employer and  
20 the employee normally share the cost of such existing health  
21 benefits, the employee shall remain responsible for the  
22 employee's share of the cost of such.

23     Sec. 17. NEW SECTION. **96A.17 Employer submission of reports**  
24 **and maintenance of records.**

25     1. As specified by the director and in the form and at  
26 the time as required by the director an employer shall submit  
27 reports and furnish information related to the family leave and  
28 medical leave insurance program to the director.

29     2. An employer shall maintain at the employer's primary  
30 place of business a record of employment for each employee from  
31 which any information needed by the department for purposes of  
32 this chapter may be obtained. Such record shall be maintained  
33 for ten years from the date on which an eligible employee  
34 applies for family leave or medical leave under this chapter.  
35 The record shall be open for inspection by the director at all



1 times. All personnel and employee medical records shall be  
2 maintained by the employer in compliance with all applicable  
3 federal and state laws.

4     Sec. 18. NEW SECTION.   **96A.18 Coordination of family leave**  
5 **and medical leave with other laws and with employer policies.**

6     1. Family leave or medical leave taken by an employee  
7 under this chapter shall be in addition to any leave required  
8 by applicable state or federal law for sickness or temporary  
9 disability because of pregnancy or childbirth.

10    2. Family leave or medical leave taken by an employee under  
11 this chapter shall be taken concurrently with any leave taken  
12 under the federal Family and Medical Leave Act of 1993, as  
13 amended.

14    3. An employer may allow an employee who has accrued  
15 vacation, sick, or other paid time off to choose to use either  
16 such accrued time or to receive paid family leave or medical  
17 leave insurance benefits under this chapter.

18     Sec. 19. NEW SECTION.   **96A.19 Relationship to other state**  
19 **and federal benefits.**

20     In any week an employee is eligible to receive benefits under  
21 chapter 85, 85A, 85B, or 96, or any other applicable state or  
22 federal unemployment compensation, workers' compensation, or  
23 disability insurance laws, the employee is disqualified from  
24 receiving family leave or medical leave insurance benefits  
25 under this chapter.

26     Sec. 20. NEW SECTION.   **96A.20 Discrimination prohibited.**

27     This chapter shall not be construed to modify or affect any  
28 federal, state, or local law prohibiting discrimination on the  
29 basis of age, race, creed, color, sex, sexual orientation,  
30 gender identity, national origin, religion, disability, or  
31 other protected category.

32     Sec. 21. NEW SECTION.   **96A.21 Department to administer**  
33 **family leave and medical leave insurance program and conduct**  
34 **outreach.**

35     1. The director shall establish and administer the family

1 leave and medical leave insurance program and disburse family  
2 leave and medical leave benefits to an eligible employee as  
3 specified in this chapter.

4 2. The director shall establish procedures and forms for  
5 an employee to file an application for benefits under this  
6 chapter.

7 3. The department shall notify an employer within five  
8 business days of an employee filing a claim for family leave or  
9 medical leave insurance benefits.

10 4. Information and records pertaining to an employee under  
11 this chapter that are maintained by the department shall  
12 be confidential and shall only be available to department  
13 personnel in the performance of official duties.

14 5. The director shall develop and implement an outreach  
15 program to ensure that employers and employees are aware of  
16 the family leave and medical leave insurance program and are  
17 aware of the leave benefits available to eligible employees.  
18 Outreach information shall explain in an easy-to-understand  
19 format all of the following:

20 a. Eligibility requirements.

21 b. The application process.

22 c. How weekly benefits are calculated and the minimum and  
23 maximum weekly benefit amount.

24 d. Restoration rights.

25 e. Nondiscrimination rights.

26 f. Confidentiality.

27 g. The relationship between employment protection, leave  
28 from employment, wage replacement benefits under this chapter  
29 and other laws, and employer policies.

30 6. The department shall be authorized to inspect and audit  
31 an employer's files and records relating to the family leave  
32 and medical leave insurance program under this chapter.

33 Sec. 22. NEW SECTION. 96A.22 Family leave and medical leave  
34 insurance account.

35 1. The family leave and medical leave insurance account

1 is created as a separate account in the state treasury in the  
2 custody of the treasurer of state.

3 2. The director shall deposit all receipts from premiums  
4 imposed under this chapter into such account. Expenditures  
5 from the account shall be used only for the purposes of the  
6 family leave and medical leave insurance program and only as  
7 authorized by the director.

8 3. All premiums deposited in the account shall remain in  
9 the account until expended pursuant to the requirements of this  
10 chapter.

11 Sec. 23. NEW SECTION. 96A.23 Rules.

12 The director shall adopt rules pursuant to chapter 17A as  
13 necessary to implement and administer this chapter.

14 Sec. 24. NEW SECTION. 96A.24 Enforcement.

15 The director may take any action under the director's  
16 authority to enforce compliance with this chapter.

17 Sec. 25. Section 84A.1, subsection 1, Code 2018, is amended  
18 to read as follows:

19 1. The department of workforce development is created to  
20 administer the laws of this state relating to unemployment  
21 compensation insurance, job placement and training, employment  
22 safety, labor standards, and workers' compensation, and the  
23 family leave and medical leave insurance program.

24 Sec. 26. DIRECTOR ANALYSIS OF FUNDING THE FAMILY LEAVE  
25 AND MEDICAL LEAVE INSURANCE PROGRAM AND REPORT TO THE GENERAL  
26 ASSEMBLY. The director of the department of workforce  
27 development shall conduct an analysis of the family leave  
28 and medical leave insurance program as funded pursuant to  
29 section 96A.12, as enacted in this Act, and of the benefits  
30 paid pursuant to section 96A.10, as enacted in this Act. The  
31 director shall determine if the premium rates and benefit  
32 levels are appropriate to fully fund and maintain the solvency  
33 of the family leave and medical leave insurance account.

34 The director shall submit the director's findings to the  
35 general assembly pursuant to section 7A.11 no later than

1 January 14, 2019.

2 EXPLANATION

3 The inclusion of this explanation does not constitute agreement with  
4 the explanation's substance by the members of the general assembly.

5 This bill relates to a family leave and medical leave  
6 insurance program, administered by the director of the  
7 department of workforce development, that provides for paid,  
8 job protected leave for certain family leave and medical leave  
9 reasons for eligible employees of specified employers.

10 An employee is eligible for family leave and medical leave  
11 after working for a covered employer, as defined in the bill,  
12 for a minimum of 12 consecutive months and a minimum of 1,250  
13 hours during the 12 consecutive-month period immediately  
14 preceding the employee's request for leave. Family leave and  
15 medical leave are defined in the bill. Family leave includes  
16 leave to care for an immediate family member with a serious  
17 health condition, to bond with a newborn child or adopted or  
18 foster child, or for a qualifying exigency for a family member  
19 as permitted under the federal Family and Medical Leave Act  
20 of 1993, as amended. Medical leave includes leave due to  
21 the employee's own serious health condition. Serious health  
22 condition is defined in the bill.

23 The bill provides that an eligible employee may not receive  
24 more than 12 weeks of family leave, 12 weeks of medical leave,  
25 or 16 weeks of combined family and medical leave in a defined  
26 consecutive 12-month period. The defined consecutive 12-month  
27 period begins on the date of the birth of a child or placement  
28 of a child for adoption or foster care with an eligible  
29 employee, or on the first date that an eligible employee takes  
30 either family leave or medical leave. The minimum duration of  
31 leave an eligible employee may take is eight consecutive hours.

32 An employee is disqualified for family leave and medical  
33 leave benefits for an absence due to the employee purposefully  
34 causing injury or sickness to the employee or a family member,  
35 for an absence caused by an illness or injury due to the

1 employee engaging in an illegal act, or an absence due to an  
2 employer taking disciplinary action against the employee.

3 An employee must provide a minimum of 30 days' notice to an  
4 employer of the employee's intent to take leave for the birth  
5 of a child or placement of a child for adoption or foster care  
6 with the employee, or of the employee's intent to take family  
7 leave or medical leave. If circumstances necessitate that an  
8 employee's leave begins in less than 30 days the employee must  
9 give as much notice as is practicable. If an eligible employee  
10 requests medical leave or family leave, the employee must make  
11 a reasonable effort to schedule their own medical treatment, or  
12 their family member's medical treatment, to not unduly disrupt  
13 the employer's operations.

14 The bill requires an eligible employee to file a claim  
15 for benefits as required by the director. The employee  
16 must consent to the disclosure of potentially private or  
17 confidential information to and from the department and the  
18 employee's employer for the administration of the family leave  
19 or medical leave. The bill specifies that such information  
20 is not a public record pursuant to Code section 22.1. The  
21 employee must attest that the employee has provided notice  
22 of the employee's intent to take leave to the employee's  
23 employer. The employee must also authorize the employee's  
24 health care provider, or the employee's family member's health  
25 care provider, to complete a certification of a serious health  
26 condition as required by the director.

27 The bill provides for a seven-day waiting period before  
28 benefits are payable. There is no waiting period for leave for  
29 the birth of a child or placement of a child for adoption or  
30 foster care.

31 The basis for the calculation of the amount of a family  
32 leave or medical leave benefit is an eligible employee's weekly  
33 earnings as defined in the bill. The weekly leave benefit  
34 amount payable to an employee for any one week is 80 percent  
35 of the employee's weekly spendable earnings, but shall not

1 exceed an amount equal to 200 percent of the statewide average  
2 weekly wage paid to employees as determined by the department  
3 of workforce development pursuant to Code section 96.19. The  
4 minimum weekly leave benefit amount shall be equal to the  
5 weekly leave benefit amount of a person whose gross weekly  
6 earnings are 35 percent of the statewide average weekly wage,  
7 or to the spendable weekly earnings of the employee, whichever  
8 is less. "Spendable weekly earnings" is defined in the bill as  
9 the amount remaining after payroll taxes are deducted from an  
10 employee's gross weekly earnings.

11 The department shall send the first benefit payment to an  
12 eligible employee within 10 days after a properly completed  
13 weekly claim for benefits is completed by the employee  
14 and received by the department. If the employee continues  
15 to submit a properly completed weekly claim, subsequent  
16 payments are to be made to the employee at least biweekly.  
17 If an employer, or the department, contests an employee's  
18 eligibility, benefit payments may be made on a conditional  
19 basis. The employee is required to pay the benefits back if  
20 the department later rules that the employee is ineligible to  
21 receive such benefits.

22 The bill provides that the family leave and medical leave  
23 insurance program shall be funded via employee and employer  
24 contributions. Beginning on January 1, 2021, and ending  
25 on December 31, 2022, the department will assess a covered  
26 employer a premium rate of four-tenths of one percent of an  
27 employee's weekly wages, subject to a maximum limit of wages  
28 subject to the assessment, as determined by the director based  
29 on the maximum wages subject to taxation for social security.  
30 One-third of the premium is to be used to fund family leave  
31 insurance benefits and two-thirds of the premium is to be  
32 used to fund medical leave benefits. The covered employer  
33 may deduct the full amount of the family leave premium from  
34 an employee's wage. A covered employer may deduct up to 45  
35 percent of the medical leave premium and 45 percent of the

1 family leave premium from an employee's wage. The employer  
2 must pay the remaining 55 percent of both the medical leave and  
3 family leave premiums. An employer may elect to pay all or any  
4 portion of an employee's share of premiums for family leave or  
5 medical leave benefits or both. Beginning January 1, 2023, the  
6 premium rate shall be calculated by the director based on the  
7 family leave and medical leave insurance account balance ratio  
8 as of September 30 of the previous calendar year. The premium  
9 rate is adjusted based on the balance ratio as detailed in the  
10 bill. If the balance ratio falls below five hundredths of one  
11 percent the bill requires the director to assess a solvency  
12 surcharge that is added to the total premium rate assessed to a  
13 covered employer. The minimum solvency surcharge is one-tenth  
14 of one percent and the maximum solvency surcharge is six-tenths  
15 of one percent.

16 On September 30 of each year, the bill requires the  
17 department to average the number of employees reported by an  
18 employer over the last four completed calendar quarters to  
19 determine if an employer is a covered employer for the next  
20 calendar year.

21 The bill requires a covered employer to collect all assessed  
22 premiums and surcharges from the employer's employees through  
23 payroll deduction and to remit all premiums to the department  
24 as required by the director.

25 An employer may apply for, and the director must grant, a  
26 waiver of premiums for an employee who is located physically  
27 outside of the state and not expected to work in the state for  
28 1,250 or more hours in any consecutive 12-month period. If  
29 the employee subsequently works 1,250 or more hours within  
30 the state, the employer and employee are responsible for all  
31 premiums that should have been collected for such 12-month  
32 period.

33 Self-employed persons may elect to participate in the  
34 family leave and medical leave insurance program for a  
35 minimum initial participation period of three years. Any

1 subsequent period of participation must be for a minimum of  
2 one year. A self-employed person must pay the employee and  
3 employer's portion of the premium assessed by the director. A  
4 self-employed person who elects to participate in the program  
5 is eligible for family leave and medical leave benefits  
6 after working a minimum of 1,250 hours in the consecutive  
7 12-month period immediately following the self-employed  
8 person's election to participate in the program. The  
9 self-employed person may withdraw from the program by providing  
10 written notice to the director. The director may cancel the  
11 self-employed person's elective coverage for failure to submit  
12 the required premiums.

13 An eligible employee who takes family leave or medical leave  
14 is entitled to restoration of employment equal to but not  
15 greater than that as provided by the federal Family Medical  
16 Leave Act of 1993 (FMLA), as amended. The bill provides that  
17 if required under FMLA, an employer must maintain any existing  
18 health benefits for the duration of an employee's leave. If  
19 the employer and employee normally share the cost of such, the  
20 employee remains responsible for paying the employee's share  
21 of the costs.

22 A covered employer must submit reports as required by the  
23 director and maintain employment records for each employee  
24 from which the director may obtain information related to an  
25 employee's family leave or medical leave. Such records shall  
26 be maintained for 10 years from the date on which an employee  
27 first takes a family leave or medical leave and shall be open  
28 for inspection by the director.

29 The bill provides that family leave or medical leave shall  
30 be in addition to leave required under state or federal law  
31 for sickness or temporary disability due to pregnancy or  
32 childbirth. The bill requires family leave or medical leave  
33 taken under this program to be taken concurrently with leave  
34 taken under FMLA. A covered employer may allow an employee to  
35 choose to use either accrued sick or vacation benefits or claim



1 family leave and medical leave benefits under this bill. An  
2 employee is prohibited from receiving family leave or medical  
3 leave benefits at the same time the employee is receiving state  
4 or federal unemployment, workers' compensation, or disability  
5 benefits. The bill prohibits discrimination on the basis of  
6 any state or federally protected category.

7 The bill requires the director to administer the family  
8 leave and medical leave insurance program and to provide  
9 outreach to ensure that employers and employees are aware of  
10 the program and the benefits available under such.

11 The bill provides that a family leave and medical leave  
12 insurance account shall be created in the custody of the  
13 treasurer of state. The director shall deposit all premiums  
14 collected from employers into such account. The account shall  
15 only be used for purposes of the family leave and medical leave  
16 insurance program as authorized by the director.

17 The director shall adopt rules pursuant to Code chapter 17A  
18 as necessary to implement and administer the provisions of the  
19 bill. The director may take any action under the director's  
20 authority to enforce compliance with the bill.

21 Code section 84A.1(1) is amended to require the department  
22 of workforce development to administer the laws relating to the  
23 family leave and medical leave insurance program.

24 The director is required to analyze the funding of the  
25 family leave and medical leave insurance program and the  
26 benefits payable from the program's account. The director  
27 shall determine if the premium rates and the benefit levels  
28 are appropriate to fully fund and maintain the solvency of the  
29 family leave and medical leave insurance program. The director  
30 shall submit the director's findings to the general assembly  
31 no later than January 14, 2019.